

**Serial No. 10/501,425**

**Amendments to the Drawings**

The attached sheets of drawings replace the original sheets 1 and 2.

Attachment: 2 replacement sheets

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**REMARKS/ARGUMENTS**

Thorough examination of the application is sincerely appreciated.

To clarify the patentable subject matter of the present invention and conform to the U.S. patent practice, claims have been amended without conceding any points or waiving any arguments in the Office Action. Entry of the amendment is respectfully requested: no new matter has been added.

In response to the objection to the drawings, replacement sheets with the legend "Prior Art" are enclosed herewith. Entry of the revised drawings is respectfully requested.

In response to the claim objections due to reference characters, Applicant's claims have been amended to delete the reference characters. Withdrawal of the objection is requested.

According to the Office Action, claims 17 and 18 are rejected under 35 USC 101 as directed to a non-statutory subject matter. In response, the rejections are traversed for the following reasons.

According to the OG Notice of November 22, 2005 entitled "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility", it is asserted in the Electro-Magnetic Signals section that "Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in Sec. 101." It will be appreciated that signal structure is not mentioned in the Guidelines. It is further respectfully submitted that claims 16 and 17 do not recite physical characteristics of a form of energy. Nor is there any recitation of frequency, voltage, magnetic field or any form of energy of a signal in Applicant's claims 16 and 17. In contrast, claims 16 and 17 recite signal

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structure. Thus, even according to the USPTO internal guidelines Applicant's claims 16 and 17 fall within the statutory subject matter category.

It is respectfully submitted that unless the Examiner provides a definitive and binding decision by the US Supreme Court or the Court of Appeals for the Federal Circuit stating that a signal structure defining the composition of a signal is a non-statutory subject matter, claims 16 and 17 cannot be rejected under 35 USC 101. Withdrawal of the rejection is therefore respectfully requested.

According to the Office Action, claims 1 – 3 and 10 – 18 are rejected under 35 USC 102(e) as being anticipated by US Published Application No. 2004/0010609 (Vilander et al). in addition, claims 4 – 9 are rejected under 35 USC 103 as being unpatentable over Vilander in view of US Patent No. 6,754,277 (Heinzelman). The rejections are respectfully traversed for the following reasons.

Vilander is directed to a telecommunications system with a protocol architecture over an interface between nodes, the protocol architecture including Internet Protocol as a protocol above a link layer protocol. According to the reference, the protocol architecture, the so-called XTP Protocol, is the inventors' own development (see paragraph [0063] of the reference). Fig. 4A of the reference shows the structure of the XTP data unit (PDU).

It is asserted on page 4 of the Office Action that paragraphs [0065] and [0066] of Vilander disclose the equivalent of a high level data packet having at least two partitions of data with different code rates, as now recited in Applicant's claim 1. This is factually incorrect. Nowhere does Vilander teach or suggest partitions of data with different code rates. In addition, an examination of Fig. 4A of the reference visually confirms that Vilander is completely silent on code rates for partitions of data in his exemplary XTP PDU.

It is further asserted on page 4 of the Office Action that Vilander's elements 144 – 146 as

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shown in Fig. 4A and described in paragraph [0065] correspond to a partition detector to provide information for coding with the different code rates. Once again, the record fails to factually support such allegation. As explicitly stated in Vilander, “the connection identifier field 144 identifies the user plane data flow between two nodes. The sequence number field 145 is used to rearrange packets at the receiving end. Length field 146 is utilized since the length of the user plane data frame field 147 may vary depending on user plane data activity” (see paragraph [0066] of the reference). It is not clear how a skilled artisan can analogize Vilander’s identifier field, sequence number field and length field with Applicant’s recited partition detector. If the Examiner can establish such a connection based on his own personal knowledge, an affidavit to such effect is respectfully requested.

Pursuant to MPEP, Section 2131, to anticipate a claim, the reference must teach every element of the claim. As discussed above, Vilander fails to teach every element of Applicant’s claim 1. It is, therefore, respectfully submitted that independent claim 1 is not anticipated by Vilander. Withdrawal of the rejection is respectfully requested.

Independent claims 11 and 15 – 17, as amended, contain the features of claim 1 as discussed above. Applicant essentially repeats the same argument as above with reference to claim 1 and asserts that claims 11 and 15 – 17 are also allowable for the same reasons as claim 1. Claims 2, 3, 10, 12 – 14 and 18 depend, either directly or indirectly, from the independent claims and thus incorporate novel and non-obvious features thereof, in addition to further limitations. Therefore, dependent claims 2, 3, 10, 12 – 14 and 18 are patentably distinguishable over the prior art for at least the same reasons as independent claims. Withdrawal of the rejections is respectfully requested.

With respect to dependent claims 4 – 9, Applicant disagrees with and traverses the analysis in the Office Action that Heinzelman supplements Vilander. But even if, for the sake of

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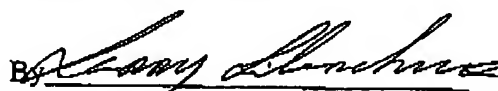
argument, Heinzelman does disclose those features of the present invention as asserted in the Office Action, Heinzelman still fails to cure the defect in Vilander by failing to disclose the above feature of the present invention as discussed above with reference to Applicant's claim 1. Withdrawal of the rejection is, therefore, respectfully requested.

In view of the above, it is respectfully submitted that Vilander and Heinzelman, alone or in combination, do not anticipate or render obvious the present invention because the prior art references fail to teach or suggest all of the features of the present invention, as discussed hereinabove.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited. However, if for any reason this application is not considered to be in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the number listed below prior to issuing a further Action.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

By   
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